

### REMARKS

The Applicant respectfully requests entry of the above amendments, and consideration of the application, as amended.

By this amendment, the Applicant has amended claims 1, 4, 5, 23, 24, 27, 29, 30, 35, and 41; cancelled claims 10, 12-22, 28, 40, and 43-45; and introduced new claims 55-61. No new matter has been introduced.

Claims 1-9, 11, 23-27, 29-39, 41, 42, and 55-61 are now pending in this application.

#### Response to Comments in Office Action

In paragraphs 2 and 3 of the Action, the Patent Office rejected claim 5 under 35 U.S.C. 112, second paragraph, as being indefinite. The Applicant believes that the above amendment addresses this rejection.

#### Response to Anticipation Rejection based upon Henkin

In paragraphs 5 and 6 on pages 2 and 3 of the Action, the Patent Office rejected claims 1-4, 6-8, 10-15, 17-19, 21-38 and 40-42 under 35 USC 102(b) as anticipated by U.S. Patent 4,762,080 of Henkin, et al. [herein "Henkin"]. The Applicant respectfully submits that this rejection is inappropriate and requests that this rejection be reconsidered and withdrawn based upon the above amendment and the following comments and observations.

The Applicant's undersigned Agent typically refers to the MPEP for guidance when considering whether an anticipation rejection is appropriate. For instance, MPEP § 2131 defines the conditions under which an anticipation rejection is appropriate:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814

F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim...

The Applicant submits that Henkin does not include "each and every element" of the invention recited in the amended claims, nor does Henkin show the invention "in as complete detail" as the amended claims.

With respect to the anticipation rejection of claims 1 and 23, claims 1 and 23 have been amended to recite that the system and method be associated with a bathing enclosure having "at least one seat having a horizontal portion" and a "foot well." This aspect of the invention is clearly illustrated in Figure 2 where the enclosure 42 having water jets 46, a seat 48, and a well defined foot well 52, positioned below the elevation of seat 48. According to one aspect of the invention, the diverter 70 diverts the flow of water from pump 30 away from the water jets 42 and to the foot well 52. This diversion of water flow allows the bather to vary the flow of water to one or more water jets 42 without increasing the flow out of any of the water jets 46 which might cause discomfort to the bather. By directing the flow of water to the foot well 52, the bather's bathing experience is not interrupted or otherwise inconvenienced.

Henkin does not disclose a seat or any structures that can in anyway be considered a seat, as disclosed in the present specification. Moreover, Henkin does not disclose a foot well or any structure that can in anyway be considered a foot well, as disclosed in the present specification. Thus, the applicant submits that the invention recited in claim 1 and 23 are not anticipated by Henkin. The Applicant respectfully requests that the rejections of claims 1 and 23 be reconsidered and withdrawn.

With respect to the rejection of claims 2-4, 6-8, 10, 11, and 24-29 as anticipated by Henkin, these rejections are inappropriate for the same reasons that the rejections of claims 1 and 23, from which they depend, are inappropriate. The Applicant respectfully requests that these rejections be reconsidered and withdrawn.

With respect to the anticipation rejection of claim 30, claim 30 has been amended to introduce the limitation that the recited method and system be implemented in a bathing enclosure "comprising at least one seat" and further includes "directing water...upon a bather seated in the at least one seat." Since Henkin does not include a seat or any structure that can be construed as a seat, the Applicant submits that Henkin does not anticipate the method recited in claim 30. The Applicant respectfully requests that this rejection be reconsidered and withdrawn.

With respect to the rejection of claims 31-34 as anticipated by Henkin, these rejections are inappropriate for the same reasons that the rejection of claim 30, from which they depend, is inappropriate. The Applicant respectfully requests that these rejections be reconsidered and withdrawn.

With respect to claim 35, claim 35 has been amended to introduce the limitation that the recited system be implemented in a bathing enclosure "comprising at least one seat...having a horizontal portion at an elevation." Claim 35 further recites that the water jets be adapted "to direct water above the elevation" and include a diverter that directs water "below the elevation" of the seat. Again, since Henkin does not include a seat or any structure that can be construed as a seat, the Applicant submits that Henkin does not anticipate the system recited in claim 35. The Applicant respectfully requests that this rejection be reconsidered and withdrawn.

With respect to the rejection of claims 36-38 and 40-42 as anticipated by Henkin, these rejections are inappropriate for the same reasons that the rejection of claim 35, from which they depend, is inappropriate. The Applicant respectfully requests that these rejections be reconsidered and withdrawn.

#### Response to Anticipation Rejection based upon Tobias

In paragraph 7 on pages 5 and 6 of the Action, the Patent Office also rejected claims 1-4, 6-8, 10-15, 17-19, 21-38, 40, and 42 under 35 USC 102(b) as anticipated by U.S. Patent 5,115,974 of Tobias, et al. [herein "Tobias"]. The Applicant respectfully

submits that this rejection is also inappropriate and requests that this rejection be reconsidered and withdrawn based upon the above amendment and the following comments and observations.

These rejections based upon Tobias are inappropriate for the same reasons that the rejections based upon Henkin, as discussed above, are inappropriate. With respect to the anticipation rejection of claims 1 and 23, claims 1 and 23 have been amended to recite that the system and method be associated with a bathing enclosure having "at least one seat having a horizontal portion" and a "foot well." Tobias does not disclose a seat or any structures that can in anyway be considered a seat, as disclosed in the present specification. Moreover, Tobias does not disclose a foot well or any structure that can in anyway be considered a foot well, as disclosed in the present specification. Thus, the applicant submits that the invention recited in claim 1 and 23 are not anticipated by Tobias. The Applicant respectfully requests that the rejections of claims 1 and 23 and their dependents be reconsidered and withdrawn.

With respect to the anticipation rejection of claim 30 as anticipate by Tobias, claim 30 has been amended to introduce the limitation that the recited method and system be implemented in a bathing enclosure "comprising at least one seat" and further includes "directing water...upon a bather seated in the at least one seat." Since Tobias does not include a seat or any structure that can be construed as a seat, the Applicant submits that Tobias does not anticipate the method recited in claim 30. The Applicant respectfully requests that this rejection of claim 30 and its dependents based upon Tobias be reconsidered and withdrawn.

With respect to claim 35 as anticipate by Tobias, claim 35 has been amended to introduce the limitation that the recited system be implemented in a bathing enclosure "comprising at least one seat...having a horizontal portion at an elevation." Claim 35 further recites that the water jets be adapted "to direct water above the elevation" and include a diverter that directs water "below the elevation" of the seat. Again, since Tobias does not include a seat or any structure that can be construed as a seat, the

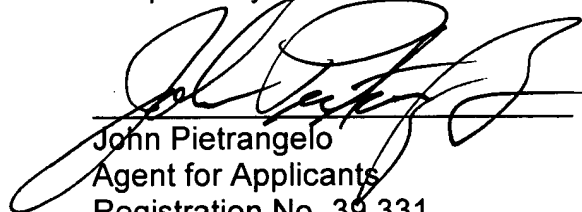
Application No.: 10/614,312  
Amendment dated June 24, 2005  
Reply to Office Action of March 24, 2005

Applicant submits that Tobias does not anticipate the system recited in claim 35. The Applicant respectfully requests that these rejections of claim 35 and its dependents be reconsidered and withdrawn.

The Applicant believes that the Amendment overcome the rejections of the subject Office Action and places the application in condition for allowance. An early and favorable action on the merits of the application is requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Applicant's undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



John Pietrangelo  
Agent for Applicants  
Registration No. 39,331

Dated: June 24, 2005.

**HESLIN ROTHENBERG FARLEY & MESITI P.C.**

5 Columbia Circle  
Albany, New York 12203-5160  
Telephone: (518) 452-5600  
Facsimile: (518) 452-5579